

REMARKS

Claims 1-29 were pending in the application. Claims 1, 3-9, 11-17, and 19-25 have been have been rejected under 35 U.S.C. §102(e) as being deemed anticipated by U.S. Patent No. 6,732,230 (Johnson et al.). Claims 2, 10, 18, and 26-29 have been rejected under 35 U.S.C. §103(a) as being deemed unpatentable over U.S. Patent No. 6,732,230 (Johnson et al.).

Of the Claims, Claims 1, 9, 17 and 25 are independent. Claims 2, 10, 18 and 26 have been canceled. Claims have been amended to clarify the Applicants' invention. The application as amended and argued herein, is believed to overcome the rejections.

Regarding Objections to the Abstract

The Abstract of the Disclosure is objected to because of a typographical error. In response, the Abstract of the Disclosure has been amended to correct the typographical error and to add corrections requested by the Office. Removal of the objection to the Abstract of the Disclosure is respectfully requested.

Regarding Rejections under 35 U.S.C. § 102(b)

Claims 1, 3-9, 11-17, and 19-25 have been have been rejected under 35 U.S.C. §102(e) as being deemed anticipated by U.S. Patent No. 6,732,230 (Johnson et al.).

An embodiment of the Applicants' invention is directed to online data migration from a non-RAID volume to a RAID volume. (*See*, for example, Page 7, line15 – Page 9, line 20.)

Turning to the cited reference, Johnson discusses a method for converting a non-RAID storage volume into a RAID array and for converting a storage volume structured in one RAID level to another RAID level without using an external backup device. (*See*, col. 6, lines 6-20.)

Johnson fails to disclose or suggest at least:

“in response to a request to access one or more other portions of the data stored in the non-RAID volume at least one of received and issued by one or more operating system processes while at least one of the reading and the writing is occurring, issuing an access request to request accessing of the one or more other portions of the data and accessing the one or more other portions of the data while the at least one of the reading and the writing is occurring.”

and so fails to disclose the invention as recited in claim 1.

In contrast, Johnson merely discusses data migration to a RAID array. There is no teaching or suggestion of “issuing an access request to request accessing of the one or more other portions of the data and accessing the one or more other portions of the data while the at least one of the reading and the writing is occurring” as claimed by the Applicants in Claim 1. Johnson merely discusses performing the data migration by temporarily storing data read from a non-RAID volume in computer memory prior to writing it to one or more storage devices in the RAID array.

Thus, Johnson merely discusses a conventional technique for data migration to a RAID array as discussed in the background of the applicants’ specification without the use of a backup device. (*See*, Applicants’ specification Page 1, paragraphs [0002] – [0003].) Furthermore, Johnson’s discussion merely discusses how the data migration is performed, for example, “automatically” and “independently”. The data migration is performed without the need for a backup device and independent of the file system organization or logical partition, for example, through the use of strips of a chosen size or on a partition-by-partition basis independent of any original partitions. There is no teaching or suggestion of accessing the one or more other portions of the data stored in the non-RAID volume by one or more operating system processes while the at least one of the reading and the writing is occurring.

Claims 3-8 are dependent claims that depend directly or indirectly on claim 1, which has been shown to be patently distinct over Johnson. Independent claims 9, 17 and 25 recite a like distinction and are thus patentable over the cited reference. Claims 11-16 depend directly or indirectly on claim 9, and claims 19-24 depend directly or indirectly on claim 17 and are thus patentable over the cited reference.

Accordingly, the present invention as now claimed is not believed to be anticipated by the cited reference. Removal of the rejections under 35 U.S.C. § 102(e) and acceptance of claims 1, 3-9, 11-17, and 19-25 is respectfully requested.

Regarding Rejections under 35 U.S.C. § 103(a)

Claims 2, 10, 8, and 26-29 have been rejected under 35 U.S.C. §103(a) as being deemed unpatentable over U.S. Patent No. 6,732,230 (Johnson et al.).

To establish a prima facie case for obviousness under 35 U.S.C. 103(a), (1) there must be some suggestion or motivation to combine reference teachings; (2) there must be a reasonable expectation of success; (3) the references when combined must teach or suggest all the claim limitations. For the reasons discussed below, it is respectfully submitted that the Office has not established a prima facie case under 35 U.S.C. 103(a) for claims 26-29 and that therefore, claims 26-29 are allowable.

Claims 2, 10, 8 and 26 have been canceled. Claims 27-29 are dependent claims that depend directly or indirectly on claim 25, which has been shown to be patently distinct over Johnson.

Furthermore, the Office action does not identify any evidence in Johnson indicating or in any way suggesting the desirability of the proposed modifications. “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” In re Fritch, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992).

Accordingly, the present invention as now claimed is not believed to be made obvious from the cited references. Removal of the rejections under 35 U.S.C. § 103(a) and acceptance of claims 27-29 is respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that all claims (claims 1, 3-9, 11-17, 19-25 and 27-29) are in condition of allowance. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the above-referenced application.

Please charge any shortages and credit any overcharges to Deposit Account Number 50-0221.

Respectfully submitted,

Date: July 23, 2007

/Caroline M. Fleming/
Caroline M. Fleming
Reg. No. 45,566
Telephone No. (978) 553-7371